

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN J. CULLEN,	:	
	:	
Plaintiff,	:	DOCKET NO.: 08-CIV-10317 (KMK)
	:	
-against-	:	ANSWER AND AFFIRMATIVE
	:	DEFENSES
CITIBANK, NA,	:	
	:	
Defendant.	:	
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Defendant, Citibank, N.A., improperly pled as Citibank NA (hereinafter referred to as "Citibank") by and through its attorneys, answers the Complaint of plaintiff, John J. Cullen (hereinafter referred to as "plaintiff") in this case as follows:

1. As to the allegations contained in the Complaint, Citibank admits that as a retired employee of Citibank plaintiff was eligible for certain pension benefits under a pension plan governed by the Employee Income Retirement Income Security Act (hereinafter referred to as "ERISA"), 29 U.S.C. §1001, *et seq.* Answering further, Citibank admits that plaintiff as of February 1, 2008 began receiving those pension benefits. Answering further, Citibank admits that pursuant to a Separation Agreement executed by plaintiff on January 18, 2008, plaintiff received, among other things, certain severance benefits under the Citigroup Separation Pay Plan for Employees of Citigroup Global Wealth Management, a welfare plan governed by ERISA. Except as so stated, Citibank denies the remaining allegations in the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's claim is barred by his failure to exhaust administrative remedies. *Jones v. UNUM Life Insurance Company*, 223 F.3d 130 (2d Cir. 2000).

2. Plaintiff's state law claims are preempted by ERISA.

3. Plaintiff is not entitled to a jury trial on his claims against Citibank. *Muller v.*

First UNUM Life Insurance Company, 341 F.3d 119 (2d Cir. 2003).

WHEREFORE, Citibank respectfully requests that judgment be entered in its favor that the Complaint be dismissed with prejudice, and that Citibank be awarded its costs and fees.

Dated: Philadelphia, Pennsylvania.
December 8, 2008

Of Counsel:
Jeremy P. Blumenfeld, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5000

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5000

By: /s/Seth Ptasiewicz

Seth Ptasiewicz
Attorneys for Defendant
Citibank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on behalf of the defendant, I caused Defendant's Answer and Affirmative Defenses to be electronically filed on this date with:

Clerk, United States District Court for the Southern District of New York
United States District Court
Southern District of New York
Hon. Charles L. Brieant, Jr. Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601-4150

I further certify that a copy was sent via overnight mail to:

John J. Cullen
208 Beech Street
Eastchester, New York 10709

Dated: Philadelphia, Pennsylvania.
December 8, 2008

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5000

By: /s/ Seth Ptasiewicz

Seth Ptasiewicz
Attorneys for Defendant
Citibank, N.A